Supreme Court, U.S.
FILED
MAY 3
IN THE SUPREME COURT

APPENDIX

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-762

CAROL MENTKOWSKI SOSNA, ETC., APPELLANT

v.

THE STATE OF IOWA, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

Docketed November 10, 1973
Probable Jurisdiction Noted February 19, 1974

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Note: The opinion and judgment of the United States District Court for the Northern District of Iowa filed on July 16, 1973, was printed as

Appendix A of the Jurisdictional Statement.

The memorandum ruling on a special appearance filed on December 27, 1972, by Judge A. L. Keck of the District Court of Iowa in and for Jackson County was printed as Appendix B of the Jurisdictional Statement.

DOCKET ENTRIES

CASE NO. 73-C-1002-ED

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA

TITLE OF CASE	ATTORNEYS
CAROL MAUREEN SOSNA, on behalf of herself, and all others similarly situated, Plaintiff, vs. THE STATE OF IOWA, and A. L. KECK, individually and as Judge of the District Court of the State of Iowa in and for Jackson County, Defendants.	For Plaintiff: H. Edwin Simmers, Paul E. Kempter, 630 Fischer Bldg. Dubuque, Iowa 52001 Tel: (319) 588-4655. For defendants: Richard C. Turner Attorney General of Iowa George W. Murray Special Assistant Attorney General State House Des Moines, Iowa 50319 Tel: (515) 281-4146

DATE		PROCEEDINGS
1973		
1-12	Filed:	Complaint with Application for Convening of a Three-Judge District Court. (Summonses to Marshall for Service 1/13/73)
1-24	Filed:	Summons returned. Served State of Iowa - 1/17/73. Fees $4.24. Summons returned. Served A. L. Keck - 1/15/73. Fees $10.68. Finding and Request entered 1/23/73. Copies sent Plaintiff's counsel and to Defendants. OB 9, p. 12.
1-29	Filed:	Order entered 1/26/73 by Honorable M. C. Matthes, Chief Judge of the Eighth

DATE	PROCEEDINGS
	Circuit designating the following as a Three-Judge Court to determine the action:
	Honorable Roy L. Stephenson, Circuit Judge;
	Honorable William C. Hanson, Judge, U.S. District Court for the Southern and Northern District of Iowa;
	Honorable Edward J. McManus, Chief Judge, U.S. District Court for the Northern District of Iowa.
	Copies sent counsel.
	OB 9, p. 13.
1-31 Filed:	Notice of Pre-Trial Conference to be held at Cedar Rapids, Iowa, on 2/15/73 at 1:00 p.m.

DATE	PROCEEDINGS
2-13 Filed:	Answer of Defendants with Certificate of Mailing.
2-16 Filed:	Stipulation of Fact signed by counsel for the parties.
	Order on Final Pre-Trial Conference held at Cedar Rapids, Iowa, on 2/15/73. Defendant to file interrogatories on Plaintiff regarding factual issue in case by 2/23/73; Plaintiff to answer interrogatories by 3/2/73; Plaintiff's Findings of Fact, Conclusions of Law, and Brief to be filed by 3/2/73; Defendant's Findings of Fact, Conclusions of Law to be filed by 3/16/73; Plaintiff's reply to be filed

DATE		PROCEEDINGS
		by 3/26/73. Copies to counsel. OB 9, p. 16.
2-23	Filed:	Defendant's Interrogatories to Plaintiff with Certificate of Service.
2-28	Filed:	Plaintiff's Answer to Defendants' Interrogatories.
3-6	Filed:	Plaintiff's Requested Findings of Fact and Conclusion of Law Plaintiff's Brief Plaintiff's Affidavit of Mailing.
3/15	Filed:	Order granting Defendant until 4/2/73 to file proposed Findings of Fact and Conclusions of Law and Brief, and granting Plaintiff until 4/12/73 to file reply. Copies sent counsel.

DATE		PROCEEDINGS
4-2	File:	Brief of Defendants with Requested Findings of Fact and Conclusions of Law with Certificate of Service.
4-12	Filed:	Plaintiff's Reply Brief with Certificate of Mailing.
7-16	Filed:	Findings of Fact, Conclusions of Law and Order - complaint dismissed with prejudice at Plaintiff's costs.
7-16	Filed:	Dissenting Opinion.
7-16	Filed:	Judgment on Decision by the Court.
9-11	Filed:	Notice of Appeal to the Supreme Court of the United States - copies to counsel of record.

DATE	PROCEEDINGS
1974	
2-25	22. Order of Supreme Court of U.S. noting probable jurisdiction.

VERIFIED COMPLAINT

Filed in the United States District Court of the Northern District of Iowa, Eastern Division, on January 12, 1974, at 5:05 p.m.

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF IOWA

(EASTERN DIVISION)

CAROL MAUREEN SOSNA, on behalf of herself, and all others similarly situated,	)	CIVIL ACTION
Plaintiff,	)	No. 73-C-1002-ED
vs.	)	
THE STATE OF IOWA, and A. L. KECK, individually and as Judge of the District Court of the State of Iowa in and for Jackson County,	)	January 12, 1973
Defendants.	)	

COMPLAINT

1. This is an action for declaratory and injunctive relief brought pursuant to Section 1983 of Title 42 of the United States Code and Section 2201 of Title 28

of the United States Code, for redress of the deprivation of rights, privileges and immunities secured to the Plaintiff by the First Amendment and due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

2. Original jurisdiction over the action is conferred upon this Court under the provisions of Section 1343 (3) of Title 28 of the United States Code as such provisions relate to actions arising under Section 1983 of Title 42 of the United States Code.

3. The Plaintiff, on behalf of herself and all others similarly situated, seeks to have Section 598.6 and 598.9 of Chapter 598 of the Code of Iowa, as amended, declared invalid as violative of her right to petition for redress of grievances as secured by the First Amendment

to the Constitution of the United States, in violation of her right under the due process and equal protection clauses of the Fourteenth Amendment and in violation of her right to travel freely from one state to another insofar as it imposes a one-year durational residency requirement on individuals seeking to inititate actions for dissolution of marriage or legal separation in the State of Iowa, and an injunction against its further applications.

4. The Plaintiff requests that a three-judge court be convened to consider the merits of this action in accordance with Sections 2281 and 2284 of Title 28 of the United States Code as she is seeking the invalidation of a State Statute of general application and an injunction against its further application.

5. The Plaintiff seeks, pursuant to

Rule 23, Federal Rules of Civil Procedure, to represent those persons similarly situated, who comprise a class of those residents of the State of Iowa who have resided therein for a period of less than one year and who desire to initiate actions for dissolution of marriage or legal separation, and who are barred from doing so by the one-year durational residency requirement embodied in Sections 598.6 and 598.9 of the Code of Iowa.

6. The Plaintiff is a female resident of the State of Iowa who has resided therein for a period of less than one year, and who desires to initiate an action of dissolution of marriage under Chapter 598 of the Code of Iowa. She is a citizen of the United States.

7. The Defendant, State of Iowa, is one of the several states of the United States of America whose General Assembly

passed into law Chapter 598 (and specifically Sections 598.6 and 598.9 thereof).

The Defendant, A. L. Keck, sued in his individual and official capacity, is a Judge of the District Court of the State of Iowa, in and for Jackson County. He is a resident of the State of Iowa and a citizen of the United States.

8. The Plaintiff, Carol Maureen Sosna, was married to Michael Sosna, on September 5, 1964, in the State of Michigan.

9. The Plaintiff was a domiciliary of the State of Michigan at the time of her marriage.

10. During the first six months of 1972, as a result of serious domestic conflicts, there was a breakdown of the marriage relationship between the Plaintiff and her husband such as to make any reconciliation impossible.

11. The Plaintiff was a resident of the State of New York until August of 1972, when she and her three children moved to Green Island, Jackson County, Iowa. The Plaintiff has resided continuously in the State of Iowa since August, 1972, and intends to make this her permanent home.

12. The Plaintiff initiated an action for dissolution of marriage pursuant to Chapter 598 of the Code of Iowa, but has been barred from so doing by the one-year durational residency requirement as the same is set forth in Sections 598.6 and 598.9 of the Code of Iowa, because she has been a resident for a period of less than one year.

13. On the 20th day of September, 1972, the Plaintiff caused her husband, Michael Sosna, to be served with Original Notice of the dissolution of marriage action in the state of Iowa. On October

24, 1972, Special Appearance attacking the jurisdiction of the Court on residency grounds was filed in said cause on behalf of the said Michael Sosna. On December 27th, the Defendant, A. L. Keck, as Judge of the District Court in and for Jackson County rendered a ruling on said Special Appearance dismissing this Plaintiff's action for dissolution of marriage.

14. The one year residency requirement of Sections 598.6 and 598.9 of the Code of Iowa, on their face and as applied to this Plaintiff and the class she seeks to represent, deprives her of the right to petition of grievances in violation of the First Amendment to the Constitution of the United States, in that it unreasonably and arbitrarily denies her access to a Court of Iowa to seek a dissolution of marriage.

15. The one-year residency requirement of Sections 598.6 and 598.9 of the

Code of Iowa, deprives this Plaintiff and the class she represents of due process and equal protection of the laws as secured by the Fourteenth Amendment to the Constitution of the United States, in that they unreasonably and arbitrarily discriminate against the Plaintiff and the class she represents.

16. The one-year durational residency requirement of Sections 598.6 and 598.9 of the Code of Iowa places invalid restrictions on the right to travel freely amongst the several states of the Union.

17. As a result, the Plaintiff has suffered and will continue to suffer irreparable harm for which there is no remedy at law.

WHEREFORE, the Plaintiff respectfully prays the Court to:

1. Assume jurisdiction of this action;

2. Convene a three-judge court pursuant to Title 28, U.S.C. SS 2281 and 2284 to judge the merits of this action;

3. Designate this to be a class action and name the Plaintiff as the representative of the class designated;

4. Enter a final judgment in accordance with Title 28, U.S.C. SS 2201 and 2204, and Rule 57, Federal Rules of Civil Porcedure, declaring the one-year durational residency requirement of Sections 598.6 and 598.9 of the Code of Iowa to be unconstitutional on its face and as applied;

5. Enter a final order permanently restraining and enjoining further enforcement and application of said Statute;

6. Order the District Court of Iowa in and for Jackson County to assume jurisdition, under the judgment and orders of this Court, of the dissolution of marriage

action previously brought in said Court;

7. Grant such order relief as the Court may deem appropriate.

THE PLAINTIFF,

By /s/ H. Edwin Simmers
H. EDWIN SMMERS

/s/ Paul E. Kempter
PAUL E. KEMPTER

VERIFICATION

STATE OF IOWA)
) SS:
COUNTY OF DUBUQUE)

I, Carol Maureen Sosna, being first duly sworn on oath according to law, hereby depose and say, that I have read the foregoing Complaint, and know the contents thereof, and that the statements contained herein are true and correct to the best of my knowledge, information and belief.

/s/ Carol Maureen Sosna
CAROL MAUREEN SOSNA

Subscribed and sworn to this 10th day of January, 1973.

/s/ Paul E. Kempter
Notary Public in and
for the State of Iowa

ANSWER OF DEFENDANTS

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF IOWA

(CENTRAL DIVISION)

CAROL MAUREEN SOSNA, on behalf of herself, and all others similarly situated,	)	ANSWER OF DEFENDANTS
Plaintiff,	)	
vs.	)	No. 73-C-1002-ED
THE STATE OF IOWA, and A. L. KECK, individually and as Judge of the District Court of the State of Iowa in and for Jackson County,	)	
Defendants.	)	

FIRST DEFENSE

The Court has no jurisdiction over the parties or the subject matter, for the following reasons:

(a) The suit is a suit by a citizen of the State of Iowa against the State of

Iowa within the meaning of the Eleventh Amendment to the Constitution of the United States of America.

(b) This Court has no jurisdiction under 42 U.S.C. § 1983 or the Fourteenth Amendment to the Constitution of the United States, as there is no invidious and purposeful discrimination.

(c) The case involves a political question not subject to jurisdiction of the Federal Courts.

(d) The suit involves primarily state laws or constitutions, and this Court should abstain until Iowa Courts have ruled on such issue.

(e) None of the statutes of the State of Iowa nor the United States of America set forth in the Complaint grant Federal jurisdiction.

SECOND DEFENSE

Plaintiff's Complaint fails to state a cause of action.

ANSWER

1. Defendants deny the allegations and conclusions contained in paragraph 1.

2. Defendants deny the allegations and conclusions of paragraph 2.

3. The Defendants deny the allegations and conclusions of paragraph 3.

4. The Defendants do not resist the request for a three-judge court contained in paragraph 4.

5. Defendants admit the allegations of paragraph 5.

6. Defendants admit the allegations of paragraph 6.

7. Defendants admit the allegations of paragraph 7.

8. The Defendants admit the allegations of paragraph 8.

9. The Defendants admit the allegations of paragraph 9.

10. The Defendants deny the allegations and conclusions in paragraph 10.

11. The Defendants deny the allegations of paragraph 11.

12. The Defendants admit the allegations of paragraph 12.

13. Defendants admit the allegations of paragraph 13.

14. The Defendants deny the allegations and conclusions of paragraph 14.

15. Defendants deny the allegations and conclusions of paragraph 15.

16. Defendants deny the allegations and conclusions of paragraph 16.

17. Defendants deny the allegations of paragraph 17.

WHEREFORE, Defendants pray that the Complaint be dismissed at Plaintiff's cost.

RICHARD C. TURNER
Attorney General of Iowa

/s/ George W. Murray
GEORGE W. MURRAY
Special Assistant
Attorney General
State House
Des Moines, Iowa 50319
Tel: (515) 281-5164

ATTORNEYS FOR DEFENDANTS

Copy mailed to:

Paul E. Kempter and H. Edwin Simmers
630 Fischer Building
Dubuque, Iowa 52001

DEFENDANTS' INTERROGATORIES

TO PLAINTIFF

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF IOWA

(EASTERN DIVISION)

CAROL MAUREEN SOSNA, on behalf of herself, and all others similarly situated,	)	
Plaintiff,	)	
vs.	)	No. 73-C-1002-ED
THE STATE OF IOWA, and A. L. KECK, individually and as Judge of the District Court of the State of Iowa in and for Jackson County,	)	
Defendants.	)	

DEFENDANTS' INTERROGATORIES
TO PLAINTIFF

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, you are hereby requested to file answers, under oath to the following written interrogatories.

These interrogatories shall be answered as of the date on which they are filed and shall be deemed continuing up to the time of trial, in that supplementary answers shall be supplied if additional or different information becomes known to the Plaintiff.

Paragraph 3 of the ORDER ON FINAL PRETRIAL CONFERENCE states as follows: "The sole factual dispute in this action is whether Plaintiff has maintained a residence in Iowa in good faith and not for the purpose of obtaining a marriage dissolution only." Counsel for Plaintiff have stated that delay in submission of this matter, due to the nature of the question involved, is detrimental to the Plaintiff. To avoid the necessity of oral depositions which would necessitate a further delay, Defendants request the Plaintiff's response to the following interrogatories

be as thorough and complete as possible.

1. Was Michael Sosna a resident of the State of New York for one year or more prior to the date this action for dissolution of marriage was commenced in the State of Iowa?

2. State, if you know, whether or not there are residency requirements in the divorce laws of the State of New York, and if so what is that requirement? Did you own real property in the State of New York, and if so for what length of time did you own said property?

3. If you owned said real property, did you consider it your "home" and live therein?

4. If said property was your "home" did you or your husband file an application for a "homestead", a real property tax exemption or credit for the year of 1972?

5. Were you employed while living in the State of New York?

6. If employed during the year 1972, is it your intention to pay a state income tax to the State of New York in the year 1973? Prior to leaving New York did you sell or otherwise transfer your real property, furniture and household goods?

7. If said property was sold or otherwise transferred by you, did your husband join in said transfer? If property owned by you was sold, briefly state the disposition of the funds on the sale of same, if any?

8. Were you a registered voter and did you vote in your community and in the State of New York?

9. Prior to or at the time of your leaving New York were you and Michael Sosna living together as husband and wife or were you separated by mutual consent?

10. If separated, for what period of time was this separation in effect? Prior to and during said separation, if any, did you or your husband discuss the possibility of a divorce and did you or your husband consult an attorney for that purpose?

11. Did you or your husband have grounds for divorce under the laws of the State of New York?

12. If either party had grounds for divorce in New York, please state same? In your move from the State of New York to the State of Iowa did you bring with you your furniture, furnishings, and necessary household goods?

13. Upon your arrival in Iowa did you purchase real estate for the purpose of establishing a home for you and your children, and if so, was it necessary that you obtain a mortgage for part of the purchase price?

14. If you did not purchase real property, did you lease premises in which you and your children are now living?

15. If you have leased real property, have you executed a written lease, and if so, what is the length of time of occupancy under the terms of said lease?

16. Are you a member of a church or do you have any other local religious affiliation in the community in which you are now living?

17. Have you established credit or charge accounts with merchants in your surrounding community?

18. If you were employed while living in the State of Iowa, have you paid a state income tax?

19. Prior to coming to the State of Iowa did you have any relations or friends living here who influenced your decision or desire to become a resident of the

State of Iowa, and if so, please identify the same and state their relationship or association with you? Is Michael Sosna still a resident of the State of New York?

20. Have you and Michael Sosna, since your stay in Iowa, ever discussed the possibilities of reconciliation or whether you would return to the State of New York to live as his wife or has he expressed any intention of moving to the State of Iowa to live with you and your children?

21. At the time your action for dissolution of marriage was commenced in Jackson County and Michael Sosna was personally served with notice of said action, was Michael Sosna in the State of Iowa for personal reasons of his own or was he in the State of Iowa at your request?

22. At a time immediately preceeding your commencing your action for dis-

solution of marriage, did you discuss with Michael Sosna, a lawyer, the differences between the grounds for divorce in the State of New York and in the State of Iowa?

23. At a time prior to your commencing your action for dissoution of marriage, either in New York or in Iowa, did you and Michael Sosna enter into any kind of an agreement concerning the state in which your action would be commenced? If so, relate the details of same.

24. Are you presently employed in the State of Iowa?

25. Are you receiving any financial assistance from any person or persons or from any governmental body in the State of Iowa?

26. Have you entered into any long time financial obligations, payable in Iowa, for the purpose of commencing a business, buying a home or for any other

reason personal to you and the support of your children? If so, state the nature of same.

RICHARD C. TURNER
Attorney General of Iowa

/s/ George W. Murray
GEORGE W. MURRAY
Special Assistant
Attorney General
State House
Des Moines, Iowa 50319
Tel: (515) 281-5164

ATTORNEYS FOR DEFENDANTS

PLAINTIFF'S ANSWER

TO INTERROGATORIES

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF IOWA

(EASTERN DIVISION)

CAROL MAUREEN SOSNA, on behalf of herself, and all others similarly situated,	)	CIVIL ACTION
Plaintiff,	)	
vs.	)	No. 73-C-1002-ED
THE STATE OF IOWA, and A. L. KECK, individually and as Judge of the District Court of the State of Iowa in and for Jackson County,	)	PLAINTIFF'S ANSWER TO INTERROGATORIES
Defendants.	)	

Plaintiff states:

1. Yes.

2. I do not know New York divorce law residency requirements. Yes, My husband and I owned a home in New York from September, 1970 to July, 1972.

3. Yes.

4. Yes.

5. Yes.

6. I was not employed in New York in 1972. My husband and I divided our furniture and household goods; I brought my share to Iowa. The real property was sold.

7. Our house was sold in July, 1972; both my husband and I joined in the transfer. The proceeds are in an escrow account which can be divided only upon the dissolution of our marriage.

8. I voted in New York while a resident there and voted in Iowa twice after my move to this state.

9. My husband and I lived together in New York from October, 1967, to August, 1971, and were separated but both living in New York from August, 1971, to August, 1972.

10. My husband and I have been separated since August of 1971 and both of us

discussed a legal separation and consulted our respective attorneys prior to and during said separation.

11. Yes, both my husband and I.

12. I had grounds of mental cruelty and adultery, my husband had grounds of mental cruelty. In my move to Iowa, I brought all my possessions and possessions of my children, including furniture, furnishings and necessary household goods.

13. No.

14. Yes.

15. Yes, 12 months.

16. I was baptized a Catholic but since the age of 12 I have not been a member of any organized religious organization.

17. No, I always pay cash for everything.

18. I have not yet filled out my state income tax form for 1972.

19. Yes, Jay and Ellen Jenson, Clinton, friends encouraged me to move to Iowa when my money in New York ran out. Other friends from Iowa, now living in New York, also encouraged the move. Michael Sosna is still a New York resident.

20. No, we have never discussed reconciliation and he has never expressed any intention of moving to Iowa.

21. He was in Iowa for his own reason to visit our children.

22. No.

23. No.

24. Yes, I do general office work for the Wildflower Photographic Studio in Green Island, Iowa.

25. I receive food stamps and share in the income from the photographic studio.

26. I have helped purchase a state sales tax permit for "Wildflower" which is now only a photographic studio but which

may expand into the natural food area this summer.

CAROL MAUREEN SOSNA,
Plaintiff

By /s/ H. Edwin Simmers
H. EDWIN SIMMERS
630 Fischer Building
Dubuque, Iowa 52001
Tel: (319) 588-4655

ATTORNEY FOR PLAINTIFF

STATE OF IOWA)
) SS:
COUNTY OF DUBUQUE)

I, Carol Maureen Sosna, being personally sworn, depose and state that I have read the foregoing Plaintiff's Answer To Interrogatories, know the contents thereof and that the statements contained therein are true and correct as I verily believe.

/s/ Carol Maureen Sosna
CAROL MAUREEN SOSNA

Subscribed and sworn to before me this 26th day of February, 1973.

/s/ Alan L. Pearson
Notary Public in and
for the State of Iowa

UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF IOWA

(EASTERN DIVISION)

CAROL MAUREEN SOSNA, on behalf of herself, and all others similarly situated,	73-C-1002-ED
Plaintiff,	
vs.	
THE STATE OF IOWA, and A. L. KECK, individually and as Judge of the District Court of the State of Iowa in and for Jackson County,	STIPULATION OF FACT
Defendants.	

A. Stipulation of Fact:

1. Plaintiff Carol Maureen Sosna is presently a resident of Green Island in Jackson County, Iowa. She has physically resided there since August, 1972. Prior to that time plaintiff resided in the State of New York for a period of more

than one year.

2. Plaintiff was married to Michael Sosna on September 5, 1964, in the State of Michigan. Said marriage is believed to be valid and in effect at the present time.

3. At all times material to this action Michael Sosna was a resident of a state other than Iowa.

4. Plaintiff desires to have her marriage to Michael Sosna dissolved under Chapter 598 of the 1971 Code of Iowa.

5. Plaintiff has attempted to initiate proceedings under Chapter 598, 1971 Code of Iowa to have her marriage to Michael Sosna dissolved but her petition was dismissed by Judge A. L. Keck solely on the basis of the one year residency requirement.

6. There exists in the State of Iowa numerous people in the same situation as

plaintiff, that is of being barred by the one year residency requirement from having their marriages dissolved. These numbers are so numerous as to make joinder impracticable. Plaintiff's claims are representative of the class and she will fairly and adequately protect the interests of the class.

7. All evidence in the case may be heard by the Honorable Edward J. McManus one of the Three-Judge Court, and the case may be decided by the Three-Judge Court on the transcript of the evidence together with such oral arguments as the court deems necessary after reviewing the briefs.

February 15, 1973.

/s/ George W. Murray
Attorney for Defendants

/s/ H. Edwin Simmers
Attorney for the Plaintiff